ADMINISTRATIVE APPEAL OF
LAWRENCE THOMPSON
v.
AREA DIRECTOR, ABERDEEN, ET AL.

IBIA 74-37-A Decided December 16, 1974

Appeal from an administrative decision of the Area Director, Aberdeen, South Dakota, affirming a decision of the Acting Superintendent, Lower Brule Agency, Lower Brule, South Dakota.

Affirmed.

1. Statutory Construction: Administrative Construction

A decision of the Area Director, Bureau of Indian Affairs, will not be disturbed where the appellant fails on appeal to meet his burden of pointing out specific errors of law or fact in the decision and no error is apparent in the decision.

2. Federal Employees and Officers: Authority to Bind Government

The Department is not bound by erroneous advice given by its employees.

APPEARANCES: Lawrence Thompson, pro se.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal filed by Lawrence Thompson, a member of the Lower Brule Sioux Tribe, hereinafter referred to as the appellant, from the decision of the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota, dated January 14, 1974. The Area Director's decision affirmed the decision of the Superintendent, Lower Brule Agency, dated April 27, 1973, as modified by the decision of the Acting Superintendent, Lower Brule Agency, dated November 26, 1973.

By authority of law and under regulations prescribed by the Secretary of the Interior the appellant was granted a revocable permit to graze 120 head of livestock on range unit No. 15 located

on the Lower Brule Sioux reservation from November 1, 1972, to October 31, 1977. The appellant prepaid the amount of $2,363.24 for the period November 1, 1972 through October 31, 1973.

By letter decision dated April 27, 1973, the Superintendent, Lower Brule Agency, advised the appellant that his allocation of Range Unit No. 15 had been revoked by the Lower Brule Tribal Council at their April 4, 1973, meeting, because he did not own enough cattle to qualify for an allocation under Tribal Grazing Resolution No. 73-20, part 2(d) which provides--

> "Must own at least 75% of the unit carrying capacity of the range unit which he/she makes application for." (See also additional stipulation No. 7(e) attached to Grazing Permit Form executed by appellant on October 6, 1972).

In addition, the Superintendent advised the appellant that the grazing fee for the current year would be refunded since appellant's cattle had not been in the unit since November 1, 1972.

On November 26, 1973, the Acting Superintendent advised the appellant that upon review it was determined that because the range was in his possession for 5 months, the prepaid fee would be pro-rated, the appellant being charged for 5 months and a refund for 7 months would be excluded from appellant's yearly fee 1973-1974 for Range Unit No. 14.

[1] The permittee appealed to the Area Director, Aberdeen, on December 6, 1973, indicating that the modification of the Superintendent's decision of April 27, 1973, placed him in an embarrassing position at the end of the year by having to raise additional money to pay the grazing fee for Range Unit No. 14. He contended among other things that he should not have to pay the 5-month charge because he had no cattle on the unit during those months. The Area Director by letter decision dated January 14, 1974, sustained the decision of the Superintendent, modified by the Acting-Superintendent on November 26, 1973. The permittee appealed to the Commissioner, Bureau of Indian Affairs, and the appeal was referred to the Board of Indian Appeals pursuant to the delegation of authority from the Secretary of the Interior.

In response to docketing notice dated April 29, 1974, the appellant admitted that his herd had dropped below the 75% minimum required by Resolution No. 73-20, part 2(d).

Contentions were made to the effect that Tribal Council nepotism contributed to the revocation of his use permit relating to Range Unit No. 15. This contention was unsubstantiated. Moreover,

it is not related to the issue before this Board. An exchange unit arrangement apparently existed between the appellant and Jerauld Jandreau, the adjoining land user, whereby Jandreau could use Range Unit No. 15 during the winter months.

The Board finds that the appellant did not satisfy part 2(d) of Resolution No. 73-20. The Board finds that appellant was in possession of Range Unit No. 15 during the months in question and he could have used same during those 5 months. No one could have prevented his use of the range at that time. The fact that the appellant did not use the range was of no consequence. Consequently, the 5-month charge was proper.

[2] It has been consistently held that the Department is not bound by erroneous advice given by its employees. Pearla (Michele Holmes) La Fleur, Robert L. Collopy and Don E. Silvers, A-29328. (July 15, 1963).

The Board further finds that the Department was not bound by the misinformation contained in the Superintendent's decision of April 27, 1973.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 211 DM 13.7, issued December 14, 1973, and 43 CFR 4.1(2), the decision of the Area Director, Aberdeen Area Office, Bureau of Indian Affairs) dated January 14, 1974, is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

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Mitchell J. Sabagh
Administrative Judge

I concur:

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Alexander H. Wilson
Administrative Judge